

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEROY WILLIAMS,

Plaintiff,

No. CIV S-05-0838 DFL CMK P

vs.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

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Plaintiff, a state prisoner, is proceeding pro se and in forma pauperis brings this action pursuant to 42 U.S.C. § 1983. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302(c)(17).

By order filed December 7, 2005, the court issued an order concluding that plaintiff's complaint stated a colorable claim against defendant Cole, but did not state colorable claims against defendants Woodford, Horowitz or Schwarzenegger. The court dismissed the claims against defendants Woodford, Horowitz and Schwarzenegger, with leave to file an amended complaint within thirty days. Plaintiff was warned that failure to file an amended complaint would result in findings and recommendations that these three defendants be dismissed from this action. Plaintiff has not filed an amended complaint.

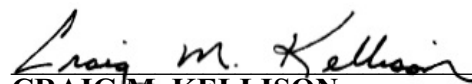
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1 In the December 7, 2005 order, the court informed plaintiff of the deficiencies in
2 his complaint and dismissed the complaint against defendants Jeanne S. Woodford, Arnold
3 Schwarzenegger and Evelyn Horowitz on the grounds that that plaintiff had failed to state a claim
4 against them upon which relief could be granted. Because plaintiff has not filed an amended
5 complaint, the court recommends dismissal of the claims against Jeanne S. Woodford, Arnold
6 Schwarzenegger and Evelyn Horowitz made in the original complaint for failure to state a claim
7 upon which the court could grant relief. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)
8 (prisoner must be given notice of deficiencies and opportunity to amend prior to dismissing for
9 failure to state a claim). By separate order, the court orders service of the complaint upon
10 remaining defendant, Marcus Cole, M.D.

11 Based on the foregoing, IT IS RECOMMENDED that this action be dismissed
12 against defendants Jeanne S. Woodford, Arnold Schwarzenegger and Evelyn Horowitz for failure
13 to state a claim upon which relief can be granted.

14 These findings and recommendations are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
16 after being served with these findings and recommendations, plaintiff may file written objections
17 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
18 and Recommendations." Plaintiff is advised that failure to file objections within the specified
19 time may waive the right to appeal the District Court's order. See Martinez v. Ylst, 951 F.2d
20 1153 (9th Cir. 1991).

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22 DATED: April 26, 2006.

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24 
25 **CRAIG M. KELLISON**
26 UNITED STATES MAGISTRATE JUDGE